

# HOUSE BILL No. 1080

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-8.1-4; IC 22-3-6-1.

**Synopsis:** Supervision of minor employees at night. Prohibits a private employer from permitting a child to work after 10 p.m. and before 6 a.m. in an establishment that is open to the public unless the child is accompanied during that time by an adult employee. Provides for a civil penalty and increased worker's compensation benefits for a violation.

**Effective:** July 1, 2003.

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**Cheney**

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January 7, 2003, read first time and referred to Committee on Labor and Employment.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1080

A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2003]: **Sec. 25.5. (a) This section does not**  
4 **provide an exception to the hours a child is permitted to work**  
5 **under section 20 of this chapter.**

6       **(b) It is unlawful for a person, firm, limited liability company,**  
7 **or corporation to permit a child who is:**

8           **(1) less than eighteen (18) years of age; and**

9           **(2) employed by the person, firm, limited liability company, or**  
10 **corporation;**

11 **to work after 10 p.m. and before 6 a.m. in an establishment that is**  
12 **open to the public unless the child is accompanied during that time**  
13 **by another employee who is at least eighteen (18) years of age.**

14       SECTION 2. IC 20-8.1-4-31, AS AMENDED BY P.L.122-2001,  
15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2003]: **Sec. 31. (a) A person, firm, limited liability company,**  
17 **or corporation that violates this chapter may be assessed the following**



civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(4) For an hour violation of not more than thirty (30) minutes under section 20 of this chapter, the following:

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- 1 (A) A warning letter for any violations identified during an  
 2 initial inspection.  
 3 (B) Fifty dollars (\$50) per instance for each violation  
 4 identified in a subsequent inspection.  
 5 (C) Seventy-five dollars (\$75) per instance for a third violation  
 6 that is identified in a subsequent inspection.  
 7 (D) One hundred dollars (\$100) per instance for a fourth or  
 8 subsequent violation that:  
 9 (i) is identified in an inspection subsequent to the inspection  
 10 under clause (C); and  
 11 (ii) occurs not more than two (2) years after a prior violation.  
 12 (5) For an hour violation of more than thirty (30) minutes under  
 13 section 20 of this chapter, the following:  
 14 (A) A warning letter for any violations identified during an  
 15 initial inspection.  
 16 (B) One hundred dollars (\$100) per instance for each violation  
 17 identified in a subsequent inspection.  
 18 (C) Two hundred dollars (\$200) per instance for a third  
 19 violation that is identified in a subsequent inspection.  
 20 (D) Four hundred dollars (\$400) per instance for a fourth or  
 21 subsequent violation that:  
 22 (i) is identified in an inspection subsequent to the inspection  
 23 under clause (C); and  
 24 (ii) occurs not more than two (2) years after a prior violation.  
 25 (6) For a hazardous occupation violation under section 25 **or 25.5**  
 26 of this chapter, the following:  
 27 (A) A warning letter for any violations identified during an  
 28 initial inspection.  
 29 (B) One hundred dollars (\$100) per instance for each violation  
 30 identified in a subsequent inspection.  
 31 (C) Two hundred dollars (\$200) per instance for a third  
 32 violation that is identified in a subsequent inspection.  
 33 (D) Four hundred dollars (\$400) per instance for a fourth or  
 34 subsequent violation that:  
 35 (i) is identified in an inspection subsequent to the inspection  
 36 under clause (C); and  
 37 (ii) occurs not more than two (2) years after a prior violation.  
 38 (7) For an age violation under section 21 or 21.5 of this chapter,  
 39 the following:  
 40 (A) A warning letter for any violations identified during an  
 41 initial inspection.  
 42 (B) One hundred dollars (\$100) per instance for each violation

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- identified in a subsequent inspection.
- (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
- (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
- (i) is identified in an inspection subsequent to the inspection under clause (C); and
  - (ii) occurs not more than two (2) years after a prior violation.
- (8) For each minor employed in violation of section 21(b) of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
  - (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
  - (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
  - (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
    - (i) is identified in an inspection subsequent to the inspection under clause (C); and
    - (ii) occurs not more than two (2) years after a prior violation.
- (9) For each violation of section 20.5 of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
  - (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
  - (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
  - (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
    - (i) is identified in an inspection subsequent to the inspection under clause (C); and
    - (ii) occurs not more than two (2) years after a prior violation.
- (b) A civil penalty assessed under subsection (a):
- (1) is subject to IC 4-21.5-3-6; and
  - (2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.
- (c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning

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1 letter by the department of labor under subsection (a).

2 (d) For purposes of determining recurring violations of this section,  
3 each location of an employer shall be considered separate and distinct  
4 from another location of the same employer.

5 (e) There is established an employment of youth fund for the  
6 purpose of educating affected parties on the purposes and contents of  
7 this chapter and the responsibilities of all parties under this chapter.  
8 One-half (1/2) of the fund each year shall be used for the purpose of the  
9 education provision of this subsection. This portion of the fund may be  
10 used to award grants to provide educational programs. The remaining  
11 one-half (1/2) of the fund shall be used each year for the expenses of  
12 hiring and salaries of additional inspectors to enforce this chapter under  
13 section 29 of this chapter. All inspectors hired to enforce this chapter  
14 shall also be available to educate affected parties on the purposes and  
15 contents of this chapter and the responsibilities of all parties under this  
16 chapter. The fund shall be administered by the department of labor.  
17 The expenses of administering the fund shall be paid from money in  
18 the fund. The treasurer of state shall invest the money in the fund not  
19 currently needed to meet the obligations of the fund in the same  
20 manner as other public funds may be invested. Interest that accrues  
21 from these investments shall be deposited in the fund. Money in the  
22 fund at the end of a state fiscal year does not revert to the state general  
23 fund. Revenue received from civil penalties under this section shall be  
24 deposited in the employment of youth fund.

25 SECTION 3. IC 22-3-6-1, AS AMENDED BY P.L.202-2001,  
26 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2003]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the  
28 context otherwise requires:

29 (a) "Employer" includes the state and any political subdivision, any  
30 municipal corporation within the state, any individual or the legal  
31 representative of a deceased individual, firm, association, limited  
32 liability company, or corporation or the receiver or trustee of the same,  
33 using the services of another for pay. A parent corporation and its  
34 subsidiaries shall each be considered joint employers of the  
35 corporation's, the parent's, or the subsidiaries' employees for purposes  
36 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of  
37 employees shall each be considered joint employers of the employees  
38 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and  
39 IC 22-3-3-31. If the employer is insured, the term includes the  
40 employer's insurer so far as applicable. However, the inclusion of an  
41 employer's insurer within this definition does not allow an employer's  
42 insurer to avoid payment for services rendered to an employee with the



1 approval of the employer. The term also includes an employer that  
 2 provides on-the-job training under the federal School to Work  
 3 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
 4 IC 22-3-2-2.5.

5 (b) "Employee" means every person, including a minor, in the  
 6 service of another, under any contract of hire or apprenticeship, written  
 7 or implied, except one whose employment is both casual and not in the  
 8 usual course of the trade, business, occupation, or profession of the  
 9 employer.

10 (1) An executive officer elected or appointed and empowered in  
 11 accordance with the charter and bylaws of a corporation, other  
 12 than a municipal corporation or governmental subdivision or a  
 13 charitable, religious, educational, or other nonprofit corporation,  
 14 is an employee of the corporation under IC 22-3-2 through  
 15 IC 22-3-6.

16 (2) An executive officer of a municipal corporation or other  
 17 governmental subdivision or of a charitable, religious,  
 18 educational, or other nonprofit corporation may, notwithstanding  
 19 any other provision of IC 22-3-2 through IC 22-3-6, be brought  
 20 within the coverage of its insurance contract by the corporation by  
 21 specifically including the executive officer in the contract of  
 22 insurance. The election to bring the executive officer within the  
 23 coverage shall continue for the period the contract of insurance is  
 24 in effect, and during this period, the executive officers thus  
 25 brought within the coverage of the insurance contract are  
 26 employees of the corporation under IC 22-3-2 through IC 22-3-6.

27 (3) Any reference to an employee who has been injured, when the  
 28 employee is dead, also includes the employee's legal  
 29 representatives, dependents, and other persons to whom  
 30 compensation may be payable.

31 (4) An owner of a sole proprietorship may elect to include the  
 32 owner as an employee under IC 22-3-2 through IC 22-3-6 if the  
 33 owner is actually engaged in the proprietorship business. If the  
 34 owner makes this election, the owner must serve upon the owner's  
 35 insurance carrier and upon the board written notice of the  
 36 election. No owner of a sole proprietorship may be considered an  
 37 employee under IC 22-3-2 through IC 22-3-6 until the notice has  
 38 been received. If the owner of a sole proprietorship is an  
 39 independent contractor in the construction trades and does not  
 40 make the election provided under this subdivision, the owner  
 41 must obtain an affidavit of exemption under IC 22-3-2-14.5.

42 (5) A partner in a partnership may elect to include the partner as

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an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6

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until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age **and, for purposes of IC 20-8.1-4-25.5, an individual who has not reached eighteen (18) years of age.**

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25 **or IC 20-8.1-4-25.5**, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks

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1 immediately preceding the date of injury, divided by fifty-two (52),  
 2 except as follows:

3 (1) If the injured employee lost seven (7) or more calendar days  
 4 during this period, although not in the same week, then the  
 5 earnings for the remainder of the fifty-two (52) weeks shall be  
 6 divided by the number of weeks and parts thereof remaining after  
 7 the time lost has been deducted.

8 (2) Where the employment prior to the injury extended over a  
 9 period of less than fifty-two (52) weeks, the method of dividing  
 10 the earnings during that period by the number of weeks and parts  
 11 thereof during which the employee earned wages shall be  
 12 followed, if results just and fair to both parties will be obtained.  
 13 Where by reason of the shortness of the time during which the  
 14 employee has been in the employment of the employee's employer  
 15 or of the casual nature or terms of the employment it is  
 16 impracticable to compute the average weekly wages, as defined  
 17 in this subsection, regard shall be had to the average weekly  
 18 amount which during the fifty-two (52) weeks previous to the  
 19 injury was being earned by a person in the same grade employed  
 20 at the same work by the same employer or, if there is no person so  
 21 employed, by a person in the same grade employed in the same  
 22 class of employment in the same district.

23 (3) Wherever allowances of any character made to an employee  
 24 in lieu of wages are a specified part of the wage contract, they  
 25 shall be deemed a part of his earnings.

26 (4) In computing the average weekly wages to be used in  
 27 calculating an award for permanent impairment under  
 28 IC 22-3-3-10 for a student employee in an approved training  
 29 program under IC 20-10.1-6-7, the following formula shall be  
 30 used. Calculate the product of:

31 (A) the student employee's hourly wage rate; multiplied by

32 (B) forty (40) hours.

33 The result obtained is the amount of the average weekly wages for  
 34 the student employee.

35 (e) "Injury" and "personal injury" mean only injury by accident  
 36 arising out of and in the course of the employment and do not include  
 37 a disease in any form except as it results from the injury.

38 (f) "Billing review service" refers to a person or an entity that  
 39 reviews a medical service provider's bills or statements for the purpose  
 40 of determining pecuniary liability. The term includes an employer's  
 41 worker's compensation insurance carrier if the insurance carrier  
 42 performs such a review.

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1 (g) "Billing review standard" means the data used by a billing  
 2 review service to determine pecuniary liability.

3 (h) "Community" means a geographic service area based on zip  
 4 code districts defined by the United States Postal Service according to  
 5 the following groupings:

6 (1) The geographic service area served by zip codes with the first  
 7 three (3) digits 463 and 464.

8 (2) The geographic service area served by zip codes with the first  
 9 three (3) digits 465 and 466.

10 (3) The geographic service area served by zip codes with the first  
 11 three (3) digits 467 and 468.

12 (4) The geographic service area served by zip codes with the first  
 13 three (3) digits 469 and 479.

14 (5) The geographic service area served by zip codes with the first  
 15 three (3) digits 460, 461 (except 46107), and 473.

16 (6) The geographic service area served by the 46107 zip code and  
 17 zip codes with the first three (3) digits 462.

18 (7) The geographic service area served by zip codes with the first  
 19 three (3) digits 470, 471, 472, 474, and 478.

20 (8) The geographic service area served by zip codes with the first  
 21 three (3) digits 475, 476, and 477.

22 (i) "Medical service provider" refers to a person or an entity that  
 23 provides medical services, treatment, or supplies to an employee under  
 24 IC 22-3-2 through IC 22-3-6.

25 (j) "Pecuniary liability" means the responsibility of an employer or  
 26 the employer's insurance carrier for the payment of the charges for each  
 27 specific service or product for human medical treatment provided  
 28 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or  
 29 less than the charges made by medical service providers at the eightieth  
 30 percentile in the same community for like services or products.

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